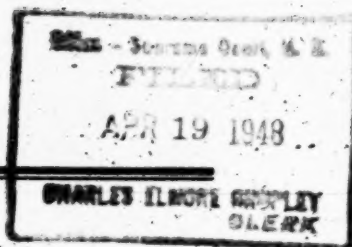


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IN THE

Supreme Court of the United States

October Term, 1947

No. 538

TORAO TAKAHASHI,

Petitioner,

—vs.—

FISH AND GAME COMMISSION, LEE F. PAYNE, as Chairman thereof, W. B. WILLIAMS, HARVEY E. HASTAIN, and WILLIAM SILVA, as members thereof.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR AMICI CURIAE

HOME MISSIONS COUNCIL OF NORTH AMERICA,

COUNCIL FOR SOCIAL ACTION AND COMMITTEE
ON CHURCH AND RACE, CONGREGATIONAL
CHRISTIAN CHURCHES,

COUNCIL ON CHRISTIAN SOCIAL PROGRESS,
NORTHERN BAPTIST CONVENTION,

HUMAN RELATIONS COMMISSION, THE PROTES-
TANT COUNCIL OF THE CITY OF NEW YORK,

Amici Curiae.

EDWARD J. ENNIS,

Counsel for Amici Curiae.

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IN THE

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No. 533

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Petitioner,

—VS.—

FISH AND GAME COMMISSION, LEE F. PAYNE, as Chairman thereof, W. B. WILLIAMS, HARVEY E. HASTAIN, and WILLIAM SILVA, as members thereof.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR HOME MISSIONS COUNCIL OF NORTH AMERICA, COUNCIL FOR SOCIAL ACTION AND COMMITTEE ON CHURCH AND RACE, CONGREGATIONAL CHRISTIAN CHURCHES, COUNCIL ON SOCIAL CHRISTIAN PROGRESS, NORTHERN BAPTIST CONVENTION, HUMAN RELATIONS COMMISSION, THE PROTESTANT COUNCIL OF THE CITY OF NEW YORK, *Amici Curiae.*

The above named associated Protestant organizations, as *amici curiae*, file this brief pursuant to the Court's Rule XXVII(9) and upon the written consent of the parties. The major Protestant denominations in the United States and leading Protestant agencies dealing with Christian responsibility toward social, economic, and race relations, are members of these organizations. These organizations recog-

size as one responsibility of the Church the elimination of racial discrimination in pursuit of a livelihood and they are devoted to achieving the practical discharge of that responsibility in every appropriate manner. This brief is filed to urge the Court to denounce as unconstitutional the statutory racial discrimination here involved.

Facts

The essential facts, more fully set forth in the brief for petitioner, are that the petitioner, born in Japan and a resident of Los Angeles, California since 1907, has been engaged in the occupation of commercial fishing off the coast of California since 1915. The petitioner annually received a commercial fishing license until he was refused a license under the 1945 amendment of Section 990 of the Fish and Game Code of California which provides that "a commercial fishing license may be issued to any person other than a person ineligible to citizenship". The Supreme Court of California, three of the seven Justices dissenting, reversed the Superior Court and upheld the statute denying the petitioner the right to a license to pursue the work of commercial fisherman which he had pursued since 1915.

ARGUMENT

The California statute on its face and as applied deprives the petitioner of liberty and property without due process of law and denies him the equal protection of the laws in violation of the Fourteenth Amendment.

It is a basic tenet of our society that the human right to work to earn a livelihood is, in the words of the Declaration of Independence, one of the inalienable rights with which man is endowed by his Creator and to secure these rights—not to grant them—governments are instituted among men. Judicial authority has expressly recognized this principle. *Slaughter-House Cases*, 16 Wall. 36, 105, 116, 127; *Case of the Monopolies*, 11 Coke Rep. 85, 86b-87a, 77 Eng. Rep. 1260, 1263.

This principle has also been repeatedly expressed as a tenet of Christian doctrine. Recently this principle was expressed as follows:

"The right to work, we believe, is a divine right. It is not an isolated right. It embodies a moral principle which cuts across the whole of life. Because of this it is clearly related to family life. The economic basis of family life is a major factor in enabling the family to find its full expression in relationship to other families which go to make up society. Therefore, the right to work is important not only to the individual but to the family and is necessarily basic to society as a whole. In this basic relationship there is a moral principle involved. It may briefly be summarized as the right of

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every individual to work without discrimination because of race, creed, or national origin."¹

"The right and opportunity for any worker to be employed without discrimination on account of race, color, creed, or national origin are so just and so in harmony with Christian ethics that all Christians and church agencies have a deep responsibility to stand for that clear Christian and democratic principle."²

The historic emancipation of the Negro minority in the United States was the primary reason for the adoption of the Fourteenth Amendment but since the meaning of this constitutional provision was first propounded in the *Slaughter-House Cases*, *supra*, it has been expressly recognized, in that case and subsequently, that the direct purpose of this Amendment was to secure due process of law and the protection of equal laws for all racial and national minorities particularly in their rights to seek their livelihood without discrimination based on race or national origin. *Slaughter-House Cases*, *supra*, at pp. 72, 81; *Butchers Union v. Crescent City Co.*, 111 U. S. 746, 757 (Field, J., concurring); p. 765 (Bradley, J., concurring); *Yick Wo v. Hopkins*, 118 U. S. 356, 369-370; *Truax v. Raich*, 239 U. S. 33, 41. In the *Truax* case the Court stated the settled principle as follows:

1. Statement of Dr. Beverley M. Boyd, Executive Secretary of the Department of Christian Social Relations, Federal Council of the Churches of Christ in America (comprising twenty-five Protestant denominations) before the subcommittee of the Senate Committee on Labor and Public Welfare on Antidiscrimination in Employment (Hearings on S.984, 80th Cong., 1st Sess., p. 83).
2. Resolution of the Executive Committee of the Home Missions Council of North America adopted in 1944 (Hearings on S.984, 80th Cong., 1st Sess., p. 84).

"It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure."

Even if the plain language of the Amendment and these authorities did not make it clear that the California statute here involved is unconstitutional such a result would follow from a consideration of the historical background of the Amendment. It cannot be doubted that the Christian insistence upon the ethical and religious concept of the equality and brotherhood of man was one basic reason for the emancipation of the Negro minority and the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments. This is evident not only from the active part played by prominent Christian religious leaders in working for emancipation, but also from the very spirit and text of President Lincoln's Emancipation Proclamation.

This basic purpose of the Fourteenth Amendment, to protect men from racial discrimination, requires that it again be applied to prevent the State of California from again violating the principle of the brotherhood of man by discriminations based on race.³

³ Federal laws in appropriate cases are construed to conform to basic religious principles which are a part of the law of the land. *Bector, etc. of Holy Trinity Church v. United States*, 143 U. S. 457; *Vidal, et al. v. Girard's Executors*, 2 How. 127, 198.

CONCLUSION

Wherefore it is respectfully prayed that the decision of the court below be reversed.

Respectfully submitted,

HOME MISSIONS COUNCIL OF NORTH AMERICA,
COUNCIL FOR SOCIAL ACTION AND COMMITTEE
ON CHURCH AND RACE, CONGREGATIONAL
CHRISTIAN CHURCHES,

COUNCIL ON CHRISTIAN SOCIAL PROGRESS,
NORTHERN BAPTIST CONVENTION,

HUMAN RELATIONS COMMISSION, THE PROTESTANT
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